

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARNELL L. THOMPSON,

Defendant-Appellant.

UNPUBLISHED

January 4, 2000

No. 212864

Wayne Circuit Court

Criminal Division

LC No. 94-007975

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARNELL L. THOMPSON,

Defendant-Appellant.

No. 212865

Wayne Circuit Court

Criminal Division

LC No. 98-000529

Before: Saad, P.J., and McDonald and Gage, JJ.

PER CURIAM.

In Docket No. 212864 defendant appeals as of right from his conviction probation violation following a conviction of unarmed robbery, MCL 750.530; MSA 28.798, entered after a bench trial. In Docket No. 212864 defendant appeals as of right from his convictions of assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279, malicious destruction of property under \$100, MCL 750.377a; MSA 28.609(1), possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and carrying a concealed weapon, MCL 750.227; MSA 28.424, entered after a jury trial. We affirm in each case. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

Felicia Cunningham testified that she, Myia Goodspeed, and Tamara Elam drove to an address on Woodline Avenue to return some items to defendant. After retrieving the items, defendant stood on the porch and fired several shots at the car. Cunningham returned to her grandmother's home on Sheridan Avenue. Subsequently, defendant appeared at the Sheridan Avenue address, and struck both Cunningham and Elam. When the police arrived, defendant ran from the scene. The police pursued and arrested defendant.

Goodspeed and Elam testified that defendant fired shots at Cunningham's car from the porch of the Woodline Avenue address. They indicated that when defendant appeared at the Sheridan Avenue address, he was carrying a handgun on his right hip.

Officers Hayward and Fitzgerald testified that when they arrived at the Sheridan Avenue address, defendant ran from the scene. As he ran, he discarded a gun. The gun was retrieved and found to be loaded. When defendant was apprehended, a search revealed the presence of ten rounds of live ammunition.

Defendant testified on his own behalf. He denied firing shots at Cunningham's car, and maintained that his friend, Fatia Johnson, fired the shots. Defendant acknowledged that he went to the Sheridan Avenue address, but denied that he discarded a gun as he ran from the scene, or that the police found ammunition on his person.

The jury found defendant guilty of assault with intent to do great bodily harm less than murder, malicious destruction of property under \$100, carrying a concealed weapon, and felony-firearm. The trial court sentenced defendant to prison terms of five to ten years, time served, two to five years, and two years, with credit for 155 days, respectively.

The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995). Prosecutorial comments must be read as a whole and in context with defense arguments. *People v Lawton*, 196 Mich App 341, 353; 492 NW2d 810 (1992). Absent a timely and specific objection, appellate review is precluded unless an instruction could not have cured prejudice, or a failure to review the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

In Docket No. 212865, defendant argues that he was denied a fair trial based on several instances of prosecutorial misconduct. We disagree. Defendant failed to object to the remarks about which he complains, or to request a curative instruction. The prosecutor's mention of two sensational cases was not improper in light of the dissimilarity of those cases to the instant matter. *People v Sharbnow*, 174 Mich App 94, 101-102; 435 NW2d 772 (1989). The prosecutor did not misstate or attempt to shift the burden of proof. Any prejudicial effect of the prosecutor's remarks could have been cured by an appropriate instruction. *Stanaway, supra*. The prosecutor's questions to defendant regarding his failure to produce witnesses were directed to defendant's own theory that Johnson fired the shots, and thus did not infringe on his right to not testify. *People v Fields*, 450 Mich 94, 112-113; 538 NW2d 356 (1995).

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proved beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992); *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998).

In Docket No. 212865, defendant argues that the evidence was insufficient to support his convictions because the testimony given by Cunningham, Goodspeed, and Elam was not credible. We disagree. The testimony of these witnesses established that defendant fired shots at the car in which they were riding, was carrying a weapon when he appeared at the Sheridan Avenue address, and struck both Cunningham and Elam. This testimony, coupled with that given by the police officers, established the essential elements of the charges against defendant. We do not interfere with the jury's resolution of credibility issues. *Wolfe, supra*. Viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's convictions. *Warren, supra*.

The decisions to admit bad acts evidence pursuant to MRE 404(b) and to allow impeachment with prior convictions pursuant to MRE 609 are within the discretion of the trial court. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1988); *People v Coleman*, 210 Mich App 1, 6; 532 NW2d 885 (1995). Absent manifest injustice, the failure to make a timely, specific objection to the admission of such evidence precludes a finding of an abuse of discretion. *People v Rice (On Remand)*, 235 Mich App 429, 439; ___ NW2d ___ (1999); *People v Hudgins*, 125 Mich App 140, 143; 336 NW2d 241 (1983).

In Docket No. 212865, defendant argues that he was denied a fair trial by the prosecutor's references to his prior arrests, his use of aliases, and his prior conviction of unarmed robbery. We disagree. Defendant did not raise a timely, specific objection pursuant to either MRE 404(b) or MRE 609. We conclude that, given the strength of the other evidence against defendant, no manifest injustice occurred, and any error was harmless. *People v Reed*, 172 Mich App 182, 188; 431 NW2d 431 (1988).

Given our affirmance of defendant's convictions in Docket No. 212865, we hold that defendant was properly convicted of probation violation in Docket No. 212864.

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Hilda R. Gage